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सं० 21] नई दिल्ली, अगस्त 24—अगस्त 30, 2003, शनिवार/भाद्र 2—भाद्र 8, 1925
No. 21] NEW DELHI, AUGUST 24—AUGUST 30, 2003, SATURDAY/BHADRA 2—BHADRA 8, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 22 अगस्त, 2003

आ. अ. 55.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, निर्वाचन अर्जी संख्या 2000 का 02 में, मद्रास उच्च न्यायालय के तारीख 8 जुलाई, 2003 के निर्णय/आदेश/रिपोर्ट को एतद्वारा प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/त.ना.-लो.स./02/2000]

आदेश से,

तपस कुमार, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 22nd August, 2003

O. N. 55.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the
2334 GI/2003

(295)

Election Commission hereby publishes the Judgment/Order of the High Court of Madras dated 8th July, 2003 in Election Petition No. 02 of 2000.

IN THE HIGH COURT OF JUDICATURE AT
MADRAS

(Ordinary Original Civil Jurisdiction)

Tuesday, the 8th day of July 2003

CORAM

The Hon'ble Mr. Justice A. K. Rajan

Election petition No. 2 of 2000

M. Thambidurai

..... Petitioner

Vs.

1. G. A. Vadivalu

2. V. Vetrivelan

3. S. Doraiswamy

4. Sivakesaban (alias) Kamvarganallur Kathiravan

5. S. K. Raju

..... Respondents

Petition praying that this Hon'ble Court may be pleased to :—

- (a) declare the election of the returned candidates, namely the second respondent herein, to No. 14, Krishnagiri Parliamentary Constituency (Tamil Nadu) in the election held on 11-9-99 and declared on 6-10-1999 as void;
- (b) declare the Petitioner as duly elected as a Member of Parliamentary Constituency (Tamil Nadu) in the Election's held on 11-9-1999; and
- (c) directing the second respondent to pay the costs of this election petition.

The above election petition No. 2 of 2000 having been heard on 1-7-2003 in the presence of Mr. T. V. Ramanujam, Senior Advocate for Mr. T. V. Krishnamachari, Counsel for the Petitioner and of Mr. T. R. Rajagopalan, Senior Advocate for Mr. P. Wilson, Counsel for the 2nd respondent and of Mr. S. P. Ravishankar, counsel for the 4th respondent and upon reading the election petition and counter filed by the 2nd respondent herein and upon hearing the evidence adduced herein and other exhibits therein referred to and having stood over for consideration till this day and coming on this day before this court for orders in the presence of the said advocates to the parties hereto and respondents 1, 3 and 5 called absent and set ex parte and this Court made the following judgment :—

This Election Petition has been filed by Mr. Thambidurai challenging the election of the second respondent, Mr. Vetrivelan from No. 14, Krishnagiri Parliamentary Constituency in the election held on 11-9-1999.

- (a) The petitioner contested as a candidate of All India Anna Dravida Munnetra Kazhagam (hereinafter referred to as "A.I.A.D.M.K."). The second respondent contested as a candidate of Dravida Munnetra Kezhagam (hereinafter referred to as "D.M.K."). The other respondents also contested in the election. The constituency consists of six assembly segments, viz., 74 Hosur, 75 Thailly, 76 Kaveripattinam, 77 Krishnagiri, 78 Barugur and 81 Palacode. There were totally 1299 polling stations. The petitioner is the former Union Law Minister. The petitioner was having prospects of sure success in the election; but the Second respondent was not having any chance of success. The second respondent is a close relative of E.G. Sugavanam, the sitting M.L.A. of Barugur assembly constituency. The "second respondent and the D.M.K. party knew well that the petitioner alone would be elected, if there was a free and fair election. The leader of D.M.K. party, Mr. M. Karunanidhi, Honourable Ministers, Mr. Mullaivendhan and Mr. Durai Murugan and

also E.G. Sugavanam, sitting M.L.A. of Barugur, P.V.S. Venkatesan and Venkatachalam, all vigorously campaigned for the second respondent and in the entire constituency, they made it clear that the second respondent should win somehow or other. Mullaivendhan was put in-charge of the constituency. Government officials and election officials were ready to support the second respondent and his election agent E.G. Sugavanam to see that the second respondent wins in the election. The first phase of polling for some of the parliamentary constituencies was held on 5-9-1999. The D.M.K. party realised that its candidates had not fared well in various constituencies. This was openly expressed by E.G. Sugavanam and Mullaivendhan to their cadres. Munivenkatappa, the election agent of the petitioner, a former M.L.A. and District A.I.A.D.M.K. Secretary received reports that the D.M.K. party did not fare well and so and that they have decided to adopt all method including booth capturing and rigging to see that the D.M.K. succeed in the next phase of election which was to be held on 11-9-1999, particularly in No. 14, Krishnagiri Parliamentary constituency. The second respondent and his election agent have planned and schemed and also spoken to the Presiding Officers and Polling Officials who agreed to aid and connive for booth capturing. The polling officials were to take the ballot papers and poll them in favour of the second respondent; and also they should hand over the ballot papers to the polling agents of the D.M.K. party or D.M.K. partymen and allow them to use those ballot papers for polling in favour of the second respondent. The petitioner came to know that the second respondent and his election agent started misusing the Government machinery and the police force to curtail the democratic activities in the constituency. The police force started fabricating false cases against the cadres of A.I.A.D.M.K. who were doing important election work. The D.M.K. cadres with the support of the police, started indulging in violence and created law and order problem. Many of the cadres of A.I.A.D.M.K. were arrested for no valid reasons, only to prevent them from participating in the election process.

- (b) The petitioner came to know through his election agent that the D.M.K. party was planning to capture many booths in Hosur, Thailly and Palacode segments. The petitioner sent a fax message on 9.9.1999 complaining about the intended corrupt practices to the Chief Election Commissioner marking a copy

to the State Election Commissioner. The D.M.K. functionaries caught hold of the office-bearers of the Tamilnadu Thodakkapalli Aasiriyargal Mandram and won over the teachers who were appointed as polling officers and presiding officers; the teachers also agreed to act as agents of the second respondent. The D.M.K. party functionaries acted as agents of the second respondent and with the consent of the second respondent influenced the polling officials and the presiding officers. The presiding officers and the polling officers acted as the agents of the second respondent.

- (c) One Soundararajan of Kandikuppam village who worked as polling officer No. 3 at polling booth 13.A.I.F. Kurianapalli village in No.77, Krishnagiri Assembly Constituency on 11-9-1999 at 4.00 p.m. made the polling authorities to surrender 12 ballot papers bearing Serial Nos. 0614789 to 0614800 to him; he by using his position as polling officer affixed the "Rising Sun" symbol of the second respondent in those ballot papers; when he was about to put them into the ballot box, he was caught red-handed. Soundararajan has committed this corrupt practice, with the consent of the second respondent and E.G.Sugavanam. The police who were mute witnesses to the said incident did not arrest Soundararajan. The presiding officer, A.M.Karunanidhi treated those 12 ballot papers as invalid and mentioned it in Form 16, but has not taken any action, because he was also aiding and conniving for the commission of the corrupt practice; only three days later, a police complaint was given by A.M.Karunanidhi, and it was registered as Crime No. 192 of 1999 in Veppanapalli Police Station; A.M.Karunanidhi also aided and connived at this corrupt practice; the petitioner has brought this to the notice of the Chief Election Commissioner, New Delhi by a fax message, dated 11-9-1999; this incident is only a tip of the iceberg.
- (d) Soundararajan was a teacher in Government School; he had made the authorities to surrender the ballot papers and had done acts which had affected the orderly conduct of the elections; this was done in furtherance of the prospects of the election of the second respondent; it is a corrupt practice under Section 123(8) read with 135A(1)(a) of the Representation of the People Act, 1951; this is sufficient to declare the election of the second respondent, as void.

- (e) The time chosen for committing the corrupt practice was morning 7.00 a.m. to 8.00 a.m.; afternoon 1.00 p.m. to 1.30 p.m. and evening 3.30 p.m. to 4.30 p.m.; that is, when there will not be much rush. At No.87-M. Periakaradiyur polling station, in, Kaveripattinam Assembly Segment, Mr.V.Gnanam was the presiding officer; he was a B.T. Assistant in Nagarasampatti Boys Higher Secondary School; he surrendered 50 ballot papers bearing Nos.0548201 to 0548250 at about 12 noon to one Dharman, the polling agent of the D.M.K.; but, in order to escape from the consequences, Gnanam conveniently lodged a belated Police complaint at 8.00 p.m. on 11-9-1999, as if those 50 ballot papers were missing. Out of these 50 ballot papers, 5 ballot papers bearing Sl.Nos.0548202, 0548217, 0548222, 0548230 and 0548240 have been polled in the same booth. The ballot papers numbering 11 bearing Sl.Nos. 0548204, 0548205, 0548207, 0548215, 0548220, 0548221, 0548225, 0548226, 05482241, 05482242, and 05482243 were polled in favour of the second respondent and they were found in the ballot boxes in polling station at No.85-M, Velampatti Polling Station. Two ballot papers bearing Sl.Nos.0548233 and 0548237 were found polled in favour of the second respondent at 54-M Baleguli Polling booth. The Petitioner has given a tabular statement giving the material particulars about the corrupt practice committed by other persons with the consent of the second respondent. The second respondent's election agent schemed in such a manner that atleast 200 ballot papers in each polling stations were given to the D.M.K. cadre and they were polled in favour of the second respondent. Polling Officers promised that if they were caught while committing the corrupt practice, they would be saved, since D.M.K. party was in power. The second respondent and his election agent told in the meetings held at S.K.P.T. Kalyana Mandapam in Hosur, Sheriff Mango Mandy in Krishnagiri, 24 Telugu Chettiar Thirumana Mandapam in Barugur, and Balaji Kalyana Mandapam in Palacode, that the presiding officers and polling officials would also oblige and aid in the commission of such corrupt practice of booth capturing. This corrupt practices have materially affected the election prospects of the second respondent.
- (f) The D.M.K. party leader Dr. M.Karunanidhi made statements in relation to the personal conduct of the petitioner with an intention to prejudice the prospects of the petitioner's election. He has made a false statement that

the petitioner as the Central Minister prevented the coming up of a Electricity Power Generation System in Tamil Nadu sanctioned in favour of A.C. Muthiah; that the power generation station of 500 mega watts has been approved by the D.M.K. Government and by the then Gujral Government at the Centre; that after the Gujral Government was dissolved, the petitioner took charge as the Central Minister; that thereafter, he contacted A.C. Muthiah and directed him to be the leader of A.I.A.D.M.K.; that the leader demanded Rs. 100 crores and thereafter the project did not take shape. Mr. M. Karunanidhi also made this statement in the election meeting held at Thiruchendhur on 25-8-1989. The petitioner has given a rebuttal for this false statement. In the election meeting addressed by Dr. M. Karunanidhi at Barugur on 5-9-1999, this false statement was made again when the second respondent was present; and he was a consenting party to the publication of this false statement; he never objected to the publication of this false statement; this statement made by Dr. M. Karunanidhi at Barugur was done with a view to prejudice the prospects of the election of the petitioner.

- (g) The total number of votes polled in No.14, Krishnagiri Parliamentary Constituency is 6, 91,123 due to the corrupt practices referred to above. The Returning Officer declared as if the second respondent was polled 3,47,637 votes and that the petitioner was polled only 3,15,930 votes. But for the corrupt practice committed, the petitioner would have been polled the majority of votes; the difference was only 31,390. Therefore, the petitioner prays for a declaration that the election of the second respondent to Krishnagiri parliamentary constituency, in the election held on 11-9-1999 and declared on 6-10-1999, as void and to declare the petitioner as duly elected in that election.

2. In the counter, the second respondent has denied the allegations. Further, he has stated that it is well-known that the petitioner was the Union Law Minister. The then B.J.P. Government was supported by the A.I.A.D.M.K. Due to the unreasonable demands laid down by the A.I.A.D.M.K. to dismiss the D.M.K. Government in the State of Tamilnadu, the A.I.A.D.M.K. lost its respect among the people which led to the poor show of the A.I.A.D.M.K. in the election for the parliament. The D.M. K. launched prosecution against the leaders of A.I.A.D.M.K. for their omissions and misdeeds; Special Courts were formed; in order to forestall the prosecution and to topple the D.M.K. Government, the A.I.A.D.M.K. party pressurized the B.J.P. Government to dismiss the D.M.K. Government. When it was not done, the A.I.A.D.M.K. withdrew the

support. Hence, the people were very much dissatisfied with the conduct of the then A.I.A.D.M.K. leader. Further, the ruling D.M.K. Government was doing good governance and undertaking good welfare measures to people and every common man was benefited and was happy. In that circumstances, there was no chance for the petitioner to win the election. It is the usual practice of the political party to campaign for their activity; in this context, the Chief Minister campaigned for this respondent; no motive can be attributed for that. Neither the Government officers nor the election officials at any point of time supported this respondent. Such allegations are only made to make out a cause of action. It is false to state that the D.M.K. party did not fare well in the election held on 5-9-1999 and that Mullalvendhan and E. G. Sugavanam decided to adopt method of booth capturing to see this respondent is elected in the election. On the other hand, people became annoyed due to the conduct and behaviour of A.I.A.D.M.K. party leader in withdrawing the support to the then B.J.P. Government. It is only the A.I.A.D.M.K. cadre who assaulted D.M.K. cadre. Since the petitioner or his party did not command good name among the people and since the petitioner was going to lose the election, in order to make out a case, the petitioner might have sent the alleged letter on 9-9-1989 to the election petition. The Chief Officer Karunanidhi had given a complaint after four days, probably at the instance of the petitioner herein; the allegation that Ganesan, presiding officer surrendered 50 ballot papers to Dharman and that the 50 ballot papers were polled in various polling booths is frivolous and false. The allegations are without any basis and are invented only for this purpose. The allegation that the persons mentioned in Annexure-9 have committed corrupt practice with the consent of the second respondent is false and baseless; The statement made by the Chief Minister has nothing to do with this respondent or the result of the election. It is false to state that the D.M.K. leader spoke anything against the petitioner with the consent of this respondent. There is no ground to set aside the election. The entire election petition is based on hearsay allegation and surmises. Hence, the election petition is to be dismissed with exemplary costs.

3. In the reply statement, the petitioner denied the allegation made in the counter-affidavit that A. I. A. D.M.K. party made certain unreasonable demands to the B.J.P. led Government for dismissing the D.M.K. Government in Tamil Nadu and therefore, A.I.A.D.M.K. lost its respect among the people which led to the poor success of A.I.A.D.M.K. in the parliamentary election. It is also denied that the A.I.A. D.M.K. lost its support from the people in view of the fact that number of cases were filed against A.I.A.D.M.K. leaders and Special Courts were constituted for its trial..

4. On these pleadings, the following issues were framed:

- (1) Whether the second respondent has committed "booth capturing"?

- (2) Whether any corrupt practices have been committed by the second respondent?
- (3) Whether the corrupt practices have materially effected the result of the election?
- (4) Whether the election of the second respondent is valid?
- (5) To what relief, the petitioner is entitled?

5. Fourth issue is modified as follows:

- (4) Whether the election of the second respondent is not valid?

6. On the side of the petitioner, P.Ws.1 to 16 have been examined. Exs.P.1 to P.16 marked. The petitioner has been examined as P.W.I. He has deposed in his evidence reiterating the averments made in the Election petition.

- (a) Further, P.W.I has stated that Ex. P.1 is the copy of the fax sent by him to the Chief Election Commissioner on 9-9-1999; it was also sent to the State Election Commissioner. Ex. P.2 is the news item published in "The Hindu", dated 10-9-1999 about his complaint. Soundararajan, polling officer was posted as the polling officer No.III at polling booth No.13-A1-F at Kuriyanapalli village in Krishnagiri Assembly Constituency. He took some ballot papers and cast the votes in favour of the second respondent. Ex.P.3 is the certified copy of F.I.R. filed against Soundararajan; Ex.P.4 is the certified copy of the remand report. Ex. P.5 is the copy of the complaint given by him to the Chief Election Commissioner on 11-9-1999 about this corrupt practice. The copy was also sent to the State Election Commissioner, District Election Officer and Returning Officer. Ex.P.6 is the certified copy of F.I.R. given by Gnanam, the presiding officer of the polling booth No.87-A regarding the missing of 50 ballot papers. Ex.P.7 is the issue dated 6.9.1999 of "Dinamalar" which published the speech of the leader of D.M.K. party. Ex.P.8 is his rebuttal for the said news item and that was published in "Namadhu" M.G.R. on 28-8-1999. Ex.P.9 is the paper publication of Tamil Daily, "Murasoli", on 27-8-1999. Ex. P.12 is the list of persons who indulged in casting bogus votes. In the cross-examination, he has stated that he has not produced any document to show that the trend was against D.M.K. in the first phase of election. The election agent Sugavanam and others influenced the polling officers Soundararajan. He does not remember other names. Mullaivendhan, Kanchana Kamalanathan, Venkatachalam influenced Soundararajan and others. He does not know the exact number of the teachers who were influenced. Rajendran and others were booked

under false cases before election, but he does not remember the crime number and the offence for which, case was registered. He has not filed the Confirmation Report for receipt of Ex. P.1. He admits that in Ex. P.1, he has not stated specifically that the second respondent has consented for the misuse of Government machineries and police force. In Ex. P.5, he has stated that the persons who were caught red-handed had accepted the activities and have given in writing, but he has not seen them personally. It is only the election agent who gave the information. Further, he has admitted that in Ex.P.4, the accused Soundararajan has stated that he has cast the vote willingly and that he has not mentioned it was at the instance of the second respondent or his election agent; that in Ex.P.5, he has not stated that the incident referred to therein had occurred with the consent of the second respondent. He has not filed any document to show that Soundararajan had used 138 ballot papers; he has also stated that he has not filed any document to show that 50,000 votes have been polled in similar fashion; He has not mentioned the names of persons who after having heard the speech of the former Chief Minister changed their minds and did not vote in his favour; Ex.P.8 does not contain his statement that the speech was made by the former Chief Minister with the consent of the second respondent; He has not challenged the statement of the former Chief Minister before any Court of Law; he has admitted that he has not complained to the Chief Election Commissioner about the speech of the former Chief Minister.

- (b) The Election Agent of the petitioner P.W.2 has stated in his evidence that he was elected on behalf of A.I.A.D.M.K. party between 1991 and 1996 in the Krishnagiri Assembly Constituency. The D.M.K. party president Mr.M. Karunanidhi campaigned in Dhar mapuri constituency on 4-9-1999 at Palacode, Thali, Hosur, Soolagiri and Krishnagiri constituency; P.W.2 personally attended the meeting of D.M.K. party president at Palacode and Krishnagiri. In the Palacode meeting, E.G. Sugavanam and the second respondent were present along with Mullaivendhan. On 5-9-1999, he attended a meeting addressed by Mr. M. Karunanidhi at Barugur. D.M.K. party president stated that during the previous Central Ministry when Mr. Venkataraman was the Minister for Surface Transport, A.C.Muthiah wanted lands for establishing power generation and the Minister was willing to allot the land; but when the petitioner

became the Minister, he directed A.C.Muthiah to meet A.I.A.D.M.K. party leader who in turn directed A.C.Muthiah to see the petitioner and when so met, the petitioner demanded 100 crores of rupees for allotting the lands; E. G. Sugavanam and the second respondent did not raise any objection for the speech. In the polling booth, Government teachers and Government servants were appointed as polling officers. The teachers were mostly members of the Tamilnadu Elementary School Teachers Manram, supporting D.M.K. party. Barugur meeting was attended by 5000 to 7000 persons; after hearing the remarks made by Mr. M. Karunanidhi, people started to think in a different way about the personal character of the petitioner. On the complaint given by the presiding officer, Karunanidhi two days after the poll, Soundararajan was arrested. On 11-9-1999/12-9-1999 at 0030 hours. Velladurai informed him that in 87-M, Periyakāradiyoor Navalapattinam polling booth, the presiding officer Gnanam had given 50 votes to the D.M.K. party agent Dharman. The presiding officer has given a complaint that 50 votes had been stolen. In all, about 70000 bogus votes were polled in favour of the second respondent. Therefore, the petitioner lost the election by 31000 votes.

- (c) In the cross-examination, he has state that he has not filed any document to show that he was the petitioner's election agent. In 1996 assembly election in Krishnagiri constituency D.M.K. won with great majority. E. G. Sugavanam was elected in Barugur constituency against J. Jayalalitha of A.I.A.D.M.K. party; the petitioner did not contest in any of the assembly constituency included in the Krishnagiri parliamentary constituency before 1999. On 4-9-1999, he heard the speech of Mr. M. Karunanidhi from his office which is nearby; but, he did not note down his speech, nor did he tape-record his speech. Mr. M. Karunanidhi spoke on his own; he did not consult anybody while he was speaking; Ex. P. 7 did not contain the full speech of Mr. M. Karunanidhi. Tamilnadu Thodakkappalli Aasiriargal Mandram is a natural koottani (association); he did not personally see the corrupt pactice cited in Ex. P.12; he does not know personally where all the 50 missing votes cited in Ex. P. 6 have been polled.
- (d) P. W. 3 thayappan is the Union Secretary of A.I.A.D.M.K. party in Soolagiri; he was appointed as the supervisor of the polling booths of Soolagiri Union for A.I.A.D.M.K.

D.M.K. meeting was held on 7-9-1989 at about 11.00 a.m. in Sennaraya Chettiyar Kalayana Mandapam; it was attended by Sugavanam and Mullaivendhan and the second respondent. Teachers who were to be officers in the election booth also attended the meeting; the kalayana mandapam is just next to his house. In that meeting, Sugavanam said that the teachers would be voting 100 to 200 bogus votes in each booth, in favour of D.M.K.; they were intructed to vote in the morning between 7.00 and 8.00 a.m., and between 1.00 and 1.30 p.m. and in the evening between 4.00 and 4.30 p.m. He informed this to P.W. 2 and the petitioner on 9-9-1999. When he went to the polling booth, the agents complained that bogus votes were polled in few places. Sathasivaiya of Berigai, Thimmarayappa of B. Muruvareppalli and others informed him about polling of bogus votes. He informed this to P.W.2.

- (e) In the cross-examination, he has stated that he was sitting in a shop belonging to P.W.4 Rajendran; he did not enter the kalayana mandapam. The entrance of kalyana mandapam is 10 by 20 feet. The meeting was attended by 150 D.M.K. party members. He told about this to the petitioner on 9-9-1999.
- (f) P.W. 4 Rajendran is the Secretary of Puratchi Thalaivi Peravai of A.I.A.D.M.K. party for Veppanapalli. He was a member of the committee constituted by A.I.A.D.M.K. party for locking after the canvassing within the Veppanapalli Union. On 11-9-1999, when he brought his mother to the polling station and made her to cast her vote, he enquired the police officers about the number of votes polled. At that time, he saw Soundararjan, the polling officer marking the ballot papers in the enclosed area meant for casting the votes; he caught hold of his hand when he was about to put the ballot papers inside the box; he informed this also to Karunanidhi, polling officer. These ballot papers were marked against the rising sun symbol; that was handed over to Karunanidhi; the ballot papers were marked against the rising sun symbol; this was at about 4.30 p.m. He reported the matter to the Block Development Officer, Veppanapalli panchayat union. Thereafter, at 8.00 p.m., he informed the petitioner at Krishnagiri.
- (g) In the cross-examination, he has stated that generally no one other than the voters would be allowed into the booth. There was a separate booth for men and women adjacent to each other. Soundararajan and Karunanidhi were in

the women's booth. Karunanidhi gave a complaint about this on 14-9-1999.

- (h) P.W. 5 was appointed as the booth agent for Berigai, No. 93-M. On 11-9-1999, a crowd of 10 people came to the booth around 3.00 to 3.30 p.m. led by Kuppusamy. They spoke to the polling officers and took about 2 or 3 books of ballot papers, affixed marks on them and put them in the ballot boxes and went away. After, the polling was concluded at 5.00 p.m., he went out and informed P.W. 3 at about 7.00 p.m. Ex. P. 16 is Form No. 16 given by the polling officer. This was marked subject to the objection regarding its authenticity.
- (i) In the cross-examination, he admitted that he has not filed the identity slip given by the polling officer; he does not know the names of 10 persons who came inside; he did not give any complaint either to the polling officer or to the police officers about this incident. Ex. P. 16 does not contain the seal of the polling officers.
- (j) P. Ws. 6 to 15 deposed almost identically as that of P.W. 5 with respect to some other booths. Cross-examination is also identical.
- (k) P. W. 16 is the Returning Officer for Krishnagiri Constituency. There were 1299 polling stations in the constituency; they were under his control during the period of election; there were Assistant Returning Officers in charge of their polling stations in their respective segments. If any reports were received by the Assistant Returning Officer, that would be communicated to him. All the records are under the control of the District Election Officer, viz., the Collector. All the candidates have given a list of their respective election agents and polling agents. He is aware that the Polling Officer Karunanidhi had given a complaint in Veppanampalli police station. Form No. 16 would contain particulars as to the number of ballot papers missing, if any. There was no incident of booth capturing in the polling booth 13A(1)F Kuriyanapalli village. He knows that Soundararajan was arrested and an F.I.R. was filed against him, but he does not know if he was arrested for casting bogus votes. There was no incident of booth-capturing at 87-M Periyakaradiyur polling booth; He did not enquire Karunanidhi or Gnanam. Had any incident of booth-capturing occurred, the Presiding Officers would have reported to him and he would have enquired about that. He had not seen any report regarding booth-capturing since there was no such incident.
- (l) Second respondent has been examined as R. W. 1. He has stated that in the election held

on 11-9-1999, he was elected as D.M.K. party candidate; he secured 3,47,637 votes; he secured more than 31,390 votes more than the petitioner. It is not correct to say that the persons mentioned in Ex. P. 12 had committed corrupt practice in the election. It is false to say that the police were foisting false cases against A.I.A.D.M.K. cadres and A.I.A.D.M.K. candidates were prevented from participating in the election; it is incorrect to say that D.M.K. party planned to capture many booths. The Polling and Presiding Officers were not only teachers, but also other Government servants. Neither he nor his election agent asked them to indulge in corruptive practices. It is false to state that 50,000 votes were polled by indulging in corrupt practice. He never asked the election officers to surrender ballot papers to D.M.K. functionaries and asked them to vote in his favour. There was no meeting at all at Chindariah Chetty Kalyanamandapam, Soolagiri prior to the election. There was no meeting by D.M.K. party at S.K.P.D. Kalyana Mandapam, Hosur, Sherit Mango Mandi, Telugu Chettiar Thirumanamandapam and Balaji Thirumana Mandapam. No statements were made by the former Chief Minister at his instance. He attended the meeting held on 5-9-1999 addressed by Mr. M. Karunanidhi. Ex. P. 7 does not contain the entire text of speech of Mr. M. Karunanidhi. It is false to say that due to the speech by the former Chief Minister, the election prospects of the petitioner were hampered. It is false to say that the second respondent won the election due to the corrupt practices indulged by the second respondent. He was the President of the Parent-Teachers' Association in Krishnagiri Boys' High School. There was no meeting of the D.M.K. candidates between 5-9-1999 and 9-9-1999. He is not aware of Ex. P. 1. It is not correct to say that A.I.A.D.M.K. cadres were prevented from doing any work in the election.

7. Learned counsel for the election petitioner submitted that from the evidence of P.W. 3, it is proved that on 7-9-1999, a meeting was held at Krishnagiri in which D.M.K. cadres were instructed that they should win the election somehow or other and they planned to cast bogus votes during the election. P.W. 4 has given evidence that in 13-A1-F Kuriyanapalli polling booth, the Polling Officer himself polled votes. But no contra evidence had been adduced and hence, evidence of P.W. 4 stands unchallenged. Therefore, that bogus votes were polled in Kuriyanapalli polling booth is proved. Regarding this, P.W. 1 has sent complaints by Exs. P. 1 and P. 5 to the Election Commissioner. That was not even denied in the counter filed by the second respondent. Ex. P. 3 is the F.I.R. given

by the Presiding Officer, Karunanidhi against Soundararajan. In that F.I.R., the names of Rajendran, P.W.4 is also found. Therefore, Exs. P. 1 to P. 4 read with the evidence of P.W.4 together establish that corrupt practice was committed in Kuriyanapalli village.

8. With respect to polling booth No. 87, Periakaradiyur, the counsel for the petitioner submitted, Ex. P. 6 is the F.I.R. given by Gnanam, the Presiding Officer on 11-9-1999 on the date of polling itself that 50 ballot papers were missing at 12.00 Noon. Ex. P. 12 contains the name of the persons indulged in corrupt practices and the booths where these 50 ballot papers were polled; the evidence of P.W. 4 and Ex. P. 16 corroborates that P.W. 5 was the polling agent of that booth. Therefore, from the evidence of P. W. 4 and 5 taken along with Ex. P. 6 and Ex. P. 16, it is proved that 50 ballot papers were handed over to second respondent's agents at Periakaradiyur polling booth and they were polled in other booths.

9. The counsel for the petitioner contended that P. Ws. 4, 5 and 9's evidence proved that there were booth-capturing in Kuriyanapalli village. The evidence of P. Ws. 12, 14 and 15 prove the booth-capturing at Periakaradiyur; Returning Officer, P. W. 16 did not dispute Ex. P. 11 and Ex. P. 12. P. W. 1's evidence on this aspect has not been rebutted and therefore it stands proved. On the contrary, there is no pleadings denying all these by the respondent. The evidence of R. W. 1 amounts to admission of the contention of P. W. 11 and P. W. 12. With respect to the incident of 31-A/1F and 87M, R. W. 1 has not spoken anything. Therefore, R. W. 1 is deemed to have admitted the evidence relating to the incident at 13-A(1) F and 87M.

10. The counsel contended that this Court cannot come to the conclusion that no corrupt practice was committed and that the petitioner has not proved his case. Unlike in the ordinary criminal cases, in election case, the burden had shifted to the respondent to prove that no incident took place in those booths. The election agent Sugavanam was not examined at all; the non-examination of the election agent proves that he avoids the Court and therefore, adverse inference has to be taken. In the circumstances, the evidence adduced by the petitioner regarding the booth capturing at Kuriyanapalli and Periakaradiyur prima facie proves the case of the petitioner and thereafter, the onus is shifted to the respondents to disprove that case. But the respondent has not examined any witness to disprove that case and therefore, the petitioner has proved R. W. 1's association in that corrupt practice. Further, R. W. 1 is the President of the Parents-Teachers Association and therefore, it is proved that the teachers who were employed as polling officers have been involved in the booth capturing. Hence by R. W. 1. When booth-capturing has been proved, the consent of the respondent is to be inferred from the circumstances and therefore the corrupt practices mentioned in 123 (8) is proved. R. Vellaidurai, P.W. 12 has spoken to the incident of involvement of

election agent. Therefore, the petitioner has proved the corrupt practice of booth capturing.

11. Learned counsel appearing for the election petitioner further submitted that under the Evidence Act, the fact in dispute can be proved by inference drawn from the evidence both direct and circumstantial as held by the Supreme Court in *R. PUTHUNAINAR ALHITHAN vs. P.H. PANDIAN* (A.I.R. 1996 S.C. 1599). The Supreme Court in *S. B. JIVATODE vs. VITHALRAO* (A.I.R. 1970 S.C. 1841) has held that the burden of proving the corrupt practice specified under Section 123 of the Representation of the People Act lies on the party alleging corrupt practice. He has to prove every ingredient of the act of corrupt practice. In *RAMSINGH vs. COL. RAM SINGH* (A.I.R. 1986 S.C. 3), the Supreme Court has held that in an election petition when the allegations are made in the petition, that certain persons involving in a specific incident near a polling booth were relations of the elected candidate, in view of the provisions under Order 8, Rule 5 of C. P. C. and the fact that alleged being material, the candidate must be deemed to have admitted the allegations. Therefore, the counsel submitted, from the evidence adduced, the petitioner has proved that bogus votes were polled in favour of the second respondent in Kuriyanapalli village by Soundararajan for which act, he was arrested (which is proved by Exs. P. 3 and P. 4). But, there is no contra evidence adduced by the respondent; it was not even denied by the respondent. Therefore, the respondent is deemed to have admitted the corrupt practice.

12. Learned Counsel for the respondent submitted that no confirmation for receipt of fax Ex. P. 1 has been filed. Further, with respect to the polling of votes by Soundararajan, evidence is available on record that Soundararajan has voted voluntarily as seen from Ex. P. 5. Further Ex. P. 5 has been given three days after the occurrence. From this evidence, it cannot be concluded that Soundararajan polled those votes only with the consent of the second respondent. Therefore, the corrupt practice of the booth-capturing cannot be said to have been proved. With respect to the incident at Periakaradiyur, the complaint given by Gnanam is that 50 ballot papers were "missing". There is no reference that 50 ballot papers were given to Dharman, as stated by P. W. 12. Therefore, the alleged incident at Periakaradiyur has not been proved. Therefore, the corrupt practice of booth-capturing and polling bogus votes are not proved.

13. In his evidence P. W. 5 has stated that Ex. P. 16 was given to him by the Presiding Officer at Kuriyanapalli. Ex. P. 16 has been marked subject to objection; it is Form No. 16. This was objected by the second respondent on the ground that it does not contain any official seal and therefore, it is inadmissible in evidence. Form No. 16 contains the particulars, such as the name of the constituency, the assembly segment, the polling station and particulars of the ballot papers, serial numbers of the ballot papers received, used, polled etc. There is no

evidence to show that it was given to P. W. 5; his name is not found in that; P. W. 5 admits that he has not produced his identity card given to him by election authorities to prove that he was the polling agent of A.I.A.D.M.K. Party for that booth. Therefore, P. W. 5 cannot mark this document (Ex. P. 16) in Court as evidence, since there was no proof that it was given to him by the Presiding Officer. Further, this document was not even shown to P. W. 16, the Returning Officer who is the competent person to speak about the authenticity of the certificate. P. W. 5 is neither the author of the document, nor there is evidence to show that it was given to him. In the circumstances, there is no other alternative except to reject Ex. P. 16 as inadmissible in evidence.

14. Even as per the decision of the Supreme Court in *RAM SINGH v. COL. RAM SINGH*, if there is any allegation in the petition that persons involved in specified incident near a polling booth were relations of the elected candidate and when it was not denied by the elected candidate, it is deemed to have been admitted by the elected candidate. But Soundararajan is not even stated to be a relative of the second respondent. Therefore, this decision does not help the petitioner.

15. Further, as per the other decisions relied upon by the petitioner, when the petitioner alleges that corrupt practice has been committed, it is for the petitioner to prove each and every ingredient of that corrupt practice. For that, the petitioner mainly relies upon Ex. P. 3 F. I. R. and Ex. P. 4 Remand Report. In the F.I.R. it is stated that P. W. 4 Rajendran, caught hold of Soundararajan while he was attempting to put the ballot papers inside the box and those ballot papers were handed over by the polling officer to the Block Development Officer. Ex. P. 4 proves that Soundararajan was remanded to judicial custody. But this is not sufficient to prove that the second respondent or his election agent were responsible for the acts of Soundararajan. Even the statement given by Soundararajan to the police has not been marked. From mere fact that Soundararajan attempted to poll vote, it cannot be concluded that he did it at the instance of or by the consent of the second respondent or his election agent. Further P. W. 16, the Returning Officer, has stated that there was no incident of booth-capturing in the entire constituency. Ex. P. 1 is the fax message given by the petitioner; two days prior to the election that D.M.K. Party cadres are planning to indulge in booth-capturing. Even assuming that Ex. P. 1 was sent, it does not advance the case of the petitioner. Even though in Ex. P. 5, P. W. 1 has given a fax message about the corrupt practice of Soundararajan on 11-9-1999, as stated already, the mere fact that Soundararajan committed corrupt practice does not prove that he did it with the consent of second respondent or his election agent. Therefore, the incident at Kurianapalli does not prove that the second respondent involved in the corrupt practice.

16. In the complaint Ex. P. 6, given by Gnanam that 50 ballot papers were missing, it is stated that during the course

of polling at 87-A, Periakaradiyur, a bundle of ballot papers consist of 50 numbers with serial numbers from 0548201 to 0548250 were missing at 12.00 clock. There is no other particulars. But, P. Ws. 2 to 4 state that out of these ballot papers, 5 were polled in the same booth and 11 were polled in Velampatti and 23 were polled at Belaguri. There is absolutely no evidence to prove that the missing ballot papers were polled in those polling stations. Therefore, the evidence of P. Ws. 2 to 4 in this regard cannot be accepted. The counsel for the petitioner submitted that since there is no rebuttal evidence, it is deemed to have been proved. This argument is not acceptable. The onus is on the petitioner to prove these facts. Further, no one can give evidence as that would be impossible to say that the missing ballot papers were polled in particular other booths. Therefore, that the corrupt practice was committed at Periakaradiyur is not proved.

17. The evidence of P. Ws. 5 to 15 are identical in all aspects. But it does not advance the case of the petitioner, in any manner. Therefore, the Issue No. 1 is answered against the petitioner.

18. Issue No. 2 : The learned counsel for the petitioner submitted that the D.M.K. Party president Mr. M. Karunanidhi in his speech at Krishnagiri made false statements with respect to the personal character of the petitioner; This has been proved by the evidence of P. W. 2 read with Exs. P. 7, P. 8 and P. 9. In the meeting, the former Chief Minister has stated that the petitioner demanded Rs. 100 crores from A.C. Muthiah. This speech has been published in "Murasoli" and other papers. Therefore, P. W. 1 has issued statement and denied that he ever demanded money from A.C. Muthiah and that the statement of Mr. M. Karunanidhi was false. But, this speech made by D.M.K. leader Mr. M. Karunanidhi has affected the reputation of the petitioner. This was done in the presence of the second respondent; admittedly, he was also present in the dais when this speech was made; he did not object for such a speech; nor his election agent who was also present in the meeting objected. Therefore, from the oral and documentary evidence, this corrupt practice of vilification of the petitioner is proved. Further, the speech made by Mr. M. Karunanidhi is admitted by R. W. 1 in his counter. But no evidence has been adduced to prove the case of the respondent; that the publication was not with the consent of R. W. 1 or by his election agent. In the circumstances, the benefit of doubt should be given to the petitioner. The oral evidence coupled with the documentary evidence filed by the petitioner proved the corrupt practice as specified in Section 135A (1) (a) and 135A (1) (b) of the Representation of the People Act.

19. The learned counsel for the petitioner further contended that the corrupt practice referred in Section 100(1) (b) is proved, when it is proved, that the false statement is published in the newspapers, that the publication was with the consent of second respondent and his election agent is proved when the presence of the

respondents and his election agent at that time is proved particularly, when they did not object to such speech. Therefore, the corrupt practice as stated in Section 123(4) is proved.

20. Learned counsel for the election petitioner submitted that in the circumstances, the Court cannot come to the conclusion that no corrupt practice was committed inasmuch as the petitioner has proved the corrupt practice by adducing evidence. Therefore, the burden is shifted to the respondents to prove that no such corrupt practice took place. But the respondent did not discharge his onus; Sugavanam, election agent has not been examined. Hence, adverse inference has to be taken against the respondent and therefore, the petitioner has proved the corrupt practice.

21. The learned counsel for the petitioner relied upon the decision in *MANOHAR JOSHI v. N.B. PATIL* (A.I.R. 1996 S.C. 796). In this case, the Supreme Court has held that any act done by leader of party of the candidate cannot be read into. Further in A.I.R. 1994, S.C. 678, the Supreme Court has held that election leaders of political parties to ensure that the campaign does not degenerate into a campaign of vilification; The statements made in public meeting made by the chief minister of a party though not amounting to corrupt practice were not upto desired level of electioneering; In that case, the statement of the returned candidate about payment of Rs.20 lakhs by the election petitioner to one of the candidates for withdrawing his nomination was held reasonably calculated to prejudice prospects of election of petitioner; such false statement of fact in respect of personal character and conduct of election petitioner amounts to corrupt practice. The counsel referred to another case *RAMACHANDRA G.KAPSE v. H. R. SINGH* (A.I.R. 1996 S.C. 817), where a meeting was conducted by the returned, candidate and in that meeting speeches were made on the basis of which allegation of corrupt practice was made when specific assertion is made by the returned candidate that the Speaker at meeting was not concerned with him and the denial that he consented to the alleged offending speeches; such denial when made, the averments in the petition cannot be read by non-traverse. But, in this case, when the specific averment has been made by the election petitioner that the D. M. K. Party leader made false statement and when the second respondent did not deny that, nor did he make that statement that he had nothing to do with the statement, it has to be inferred that the statement was made by the leader of the party only with his consent.

22. Learned counsel for the petitioner submitted that when the D.M.K. leader spoke in the public meeting, R.W.1 was present. But, admittedly, he did not object. Therefore, it has to be presumed that it was done only with the consent of the second respondent. With respect to the statement made/published against the election petitioner, the respondent in his counter has stated, "it is a matter of

fact". It amounts to admission. Therefore, that D.M.K. leader spoke ill of the election petitioner is proved. In the circumstances, the benefit of doubt has to be given to the petitioner. Inasmuch as—P.W.1 did not object to such speech, the second respondent's *mens rea* is to be presumed. With respect to the corrupt practice specified under Section 123(4) of the Act, the statement made by the leader of D.M.K. is proved to be false, publication of the false statement has been proved, presence of the second respondent has also been proved that he has not objected is also not proved. Therefore, the consent of the second respondent has been proved. In the result, from the evidence adduced, the corrupt practice referred to in Section 123, clause (4) has been proved as the consent of the second respondent should also be inferred from the circumstances in this case is proved.

23. The learned counsel for R. 2 submitted that about the speech made by the D.M.K. leader, the information was given to P.W.1 by P.W.3. But, P.W.3 says that he was informed by Savith. Therefore, there is no acceptable evidence that D.M.K. leader spoke offending words because that is not stated by the person who heard it. The petitioner relied upon the paper publication Exs. P. 7 to P. 9 and contended that there is a character assassination on him. He relies upon the newspaper publication. Learned counsel appearing for the second respondent submitted that as per the decision of the Supreme Court in *S. N. BALAKRISHNA v. FERNANDEZ* (A.I.R. 1969 S.C. 1201), news item has no value; it can be taken only to support other evidence. Further, in another case in *QUAMARUL ISLAM v. S. K. KANTA* (A.I.R. 1994, S.C. 1733), the Supreme Court has held that newspaper reports are not admissible when the scribe who attended the meeting and recorded the speech has not been examined. Therefore, Exs. P. 7 to P. 9 do not help the petitioner.

24. The learned counsel for the respondents relied upon the case in *VIMAL v. BHAGUJI* (A.I.R. 1995 S.C. 1836) and further submitted that in the election, speeches made by the leaders as published in the newspapers cannot be deemed as evidence, unless the newspaper reporters were examined and their notings made at the time of listening speeches were produced. Under the circumstances, the Court can draw inference against the authenticity test of the speeches. Further, in the case reported in A.I.R. 1969 S.C. 1201, cited above, the Supreme Court has held that mere knowledge does not amount to consent of the candidate. Therefore, the mere presence of the second respondent in the meeting where the D.M.K. leader has made a speech does not prove that the speech was made with the consent of the second respondent. Therefore, Exs. P. 7 to P. 9 do not prove that the D.M.K. leader made false statements about the personal character of the election petitioner and therefore, the corrupt practice specified under S. 123(8) is not proved. Learned senior further submitted that in election cases, the standard of proof that is required is that standard of proof which is

similar in proving a criminal or quasi-criminal charge. In support of this contention, the learned counsel relied upon a decision reported in *M. NARAYANA RAO v. G. VENKATA REDDY* (A.I.R. 1977 S.C. 208) and *R.P. MOIDUTTY v. P.T. KUNJUMOHAMMAD* [2000] 1 S.C.C. 481]. When the evidence on record is so tested, it is seen that the petitioner failed to prove that the second respondent has indulged in corrupt practice. Therefore, the petition is liable to be dismissed.

25. The election petitioner relies upon Exs. P. 7, P. 8 and P. 9 to prove the corrupt practice that the D.M.K. leader made false statement on the personal character of the petitioner in Ex.P.7 the Speech made at Krishnagiri has been published. In Ex.P.7, there is no reference to the petitioner. There is only a reference to the leader of A.I.A.D.M.K. party. Ex.P.9 is the paper publication of a speech of D.M.K. leader made at Tiruchendur. Only in that, there is a reference to the petitioner. But admittedly, second respondent was not present at Tiruchendur. Further, even P.Ws.2 and 3 admitted Ex.P.7 does not contain the full text of the speech of the leader of D.M.K. Inasmuch as there is no reference to the election petitioner in Ex.P.7, it cannot be said that the personal conduct of the election petitioner has been commented in the presence of the second respondent within the Krishnagiri Parliamentary Constituency. Therefore, it cannot be said that the leader of D.M.K. party made false statements with the consent of the second respondent in Krishnagiri Constituency about his personal character. Therefore, it cannot be said that the corrupt practice specified under Section 123(8) of the Act has been committed by the second respondent. Considering the totality of the evidence before the Court, it cannot be said that the second respondent indulged in corrupt practice has been proved.

26. Learned counsel appearing for the respondent further submitted that the affidavit filed in support of the election petitioner is not in accordance with Form 25 of the Representation of People Act. The affidavit shall be in Form 25. According to that, the petitioner shall verify that the statements made in a particular paragraph are true to his knowledge and that the statements made in some paragraphs are true to his information; that is, the affidavit must specifically contain a declaration or oath to the effect which of the statements are to his knowledge and which of those statements are to his information, that is the statements which are to his knowledge has to be stated specifically and the statements made on information should be separately mentioned. But, in this case, the affidavit has been sworn that the statements made in some

of the paragraphs are true to his "knowledge and information". Therefore, the affidavit is defective and not in conformity with Rule 94A. This Court in another Election Petition has held that such a defect is fatal and the election petition was dismissed. The learned counsel for the respondent replied that such a defect in the affidavit is curable and the order of this Court in this vary election petition in another application has accepted that such a defect is curable and therefore, it is not defective. Learned counsel for the respondent replied that assuming that to be curable, the petitioner has not cured that defect by filing another affidavit or amending the pleadings. Therefore, his affidavit is still defective in form. This argument of the counsel for the respondent is acceptable.

27. This Court in the election petition No. 3 of 2000 concerning with the very same election has held that such a declaration made in the pleadings of the Election Petition were defective. But, in the election petition, this Court has held that such defect is curable, but even after that, the defect have not been cured. Therefore, the verification made by the petitioner that the statements made in some of the paragraphs are true to his knowledge and information are not in conformity with Form No. 25 hence defective. That is the mandatory provisions R.94A has been violated. On this ground also, the election petition is liable to be dismissed.

28. Issue No. 3 : In view of the finding given to Issue Nos. 1 and 2, the Issue No. 3 does not arise. Therefore, Issue No. 3 is found against the petitioner.

29. Issue No. 4 : In view of the finding in Issue Nos. 1 to 3, Issue No. 4 is decided in favour of the second respondent.

30. Issue No. 5 : In the result, the election is dismissed. No costs.

Witness the Hon'ble Thiru Bollampally Subhashan Reddy, Chief Justice at Madras, aforesaid, this the 8th day of July 2003.

Sd/-

K. KARUPPIAH, Assistant Registrar,

Original Side-II

[No. 82/TN-HP/02/2000]

By Order,
TAPAS KUMAR, Secy.